

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 5405 OF 2005

Sarvadaman M. Doshi & Ors. ...Petitioners.
Vs.
The Recovery Officer & Ors. ...Respondents.

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Mr. Milind Sathe with Mr.S.B.Shetye for the Petitioners.
Mr. Satish Shetye with Mr. Rishab Shah & Ms.Swati Deshpande
i/b. M/s.Bodhanwalla & Co. for Respondent No.5.
Mr. S.D. Rane for Respondent No.6.
Mr.Anurag Gokhale for Respondent No.8.

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**CORAM : F. I. REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.**

October 5, 2005.

P.C.

The Petitioners challenge in these proceedings the orders passed by the Recovery Officer confirming the sale of plant and machinery in execution of a recovery certificate and orders passed by the Debts Recovery Tribunal and by the Appellate Tribunal in appeal. A direction has *inter alia* been sought from this Court, calling upon the Bank and the purchaser to pay a sum of Rs.20 crores by way of damages.

2. The Bank of India (the Fifth Respondent) instituted

proceedings for the recovery of its dues against a Company by the name of Mansukh Industries Ltd. The Company was ordered to be wound up by an order dated 20th December 1999 and the Official Liquidator took possession of the properties on 18th January 2001. The Liquidator was impleaded to the proceedings before the Debts Recovery Tribunal. On 9th May 2001, the application filed by the Bank was allowed in the sum of Rs. 13,31,71,362/- together with interest at the rate of 18% per annum from the date of the institution of the suit until realisation. The Tribunal held that the Bank was entitled to execute the decree by the sale of movable and immovable assets. According to the Bank, it held a valid charge which was registered with the Registrar of Companies in 1994.

3. In execution of the recovery certificate, a warrant of attachment was issued on 31st July 2002 in respect of (i) immovable property – CTS Nos.1020/3 to 1020/9, admeasuring 12718.9 sq.meters, situate at village Kanjur, Bombay Suburban District; and (ii) furniture, fixtures, stocks, raw material and the plant and machinery of the Company. The plant and machinery was put to sale, and was ordered to be sold to the highest bidder,

the Sixth Respondent. The sale was confirmed on 9th March 2005. An order for possession was issued on 15th March 2005 in favour of highest bidder upon the deposit of the entire consideration. The sale having been confirmed, a sale certificate has been issued and possession has been handed over to the Sixth Respondent. The appeal filed by the Petitioners was dismissed by the Debts Recovery Tribunal and that order was confirmed by the Appellate Tribunal.

4. In view of the provisions of law that hold the field, the remedy which is available to the Petitioners is to institute a suit for challenging the sale of the plant and machinery. The Petitioners will have to be relegated to the said remedy. Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 stipulates that the provisions of the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and Rules referred to the amount of debt due under the Act instead of to the Income Tax. The Rules contained in the Second Schedule to the Income Tax Act, 1961 *inter alia*

provide for the institution of a suit under Rule 11(6) for the establishment of a right which the objector claims to the property in dispute where a claim or an objection has been preferred to the Tax Recovery Officer and an order has been passed against the objector. Rule 45 provides for the institution of a suit for the recovery of compensation or of specific property in the event of an irregularity in publishing or conducting a sale where a substantial injury has been caused. Rule 45 provides as follows :

“45. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.”

The remedy of the Petitioners must hence lie in the institution of a suit as provided in the Second Schedule to the Income Tax Act, 1961.

5. The view which we have formed in regard to the necessity of relegating the Petitioners to the institution of a suit is supported in the facts of the present case as well, by the nature of

the controversy which arises between the parties. According to the Petitioners, there was a partnership firm by the name of Mansukh Dyeing and Printing Mills of which they were partners. The partnership is claimed to have acquired *inter alia* reversionary rights in respect of the immovable property referred to earlier by a registered Deed of Conveyance. A notice of dissolution is stated to have been issued on 25th November 1986. Disputes arose between the partners and these were referred to arbitration. According to the Petitioners, a preliminary award was passed on 17th August 2001 followed by a final award dated 14th November 2002 by which the assets of the dissolved firm were declared to include *inter alia* the property situated at Kanjur together with plant, machinery and equipment. According to the Petitioners, therefore, the property in question was not property belonging to the Company in liquidation, but constituted the assets of the partnership. The Petitioners submitted that though they had applied to the Recovery Officer for raising the warrant of attachment, the property came to be sold without their objections being dealt with.

6. On the other hand, it has been asserted on behalf of the

Bank that (i) The Bank was not a party to the arbitral proceedings and that it held a valid charge that was registered in 1994 with the Registrar of Companies; (ii) No steps were taken to execute the arbitral award from 17th August 2001 right until the Bank instituted an application for the sale of the plant and machinery on 21st February 2005; (iii) The Official Liquidator had taken possession of the property pursuant to the order of winding up passed on 20th December 1999; (iv) Though the Official Liquidator was in possession between 1995 and 2005, no steps were taken by the Petitioners and in fact, an application filed before the Company Court had been withdrawn; and (v) Though the Advocate appearing on behalf of the Petitioners was present before the Recovery Officer on 7th March 2005 and 9th March 2005, no objections were raised to the sale of the plant and machinery.

7. We have broadly adverted to the rival claims of the parties in order to emphasise that these are matters for the resolution of which the Petitioners must be relegated to the remedy of instituting a suit which is available in law. One of the prayers in these proceedings is for the payment of damages quantified at Rs.20 crores. This cannot be adjudicated upon in the course of

writ proceedings and evidence would have to be adduced at the trial of a suit.

8. The warrant of attachment has been issued in respect of the immovable property as well as the plant, machinery and movables including furniture, fixtures, stock and raw material. In so far as the challenge to the sale of the plant and machinery is concerned, for the reasons already indicated by us, the Petitioners would be at liberty to institute a suit in a Court of competent jurisdiction. In so far as the application by the Petitioners for the raising of the warrant of attachment in respect of the other items forming part of the warrant is concerned, we direct the Recovery Officer to decide the application filed by the Petitioners, after hearing the parties, in accordance with law. In deciding the objections raised by the Petitioners, the observations contained in the impugned orders dated 25th May 2005 and 7th June 2005 of the Debts Recovery Tribunal and Debts Recovery Appellate Tribunal shall not come in the way.

9. The Writ Petition is accordingly disposed of in these terms. There shall be no order as to costs.

(F. I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)